IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.56 OF 2007

WITH

CIVIL APPLICATION NO.84 OF 2007

Kedar Shivkumar Kale.)
Chairman of Council of Management)
of Aryan Education Society, residing at)
"Laxmi Janardhan", J.V.Kale Marg)
Near Laxmi Temple, Palghar,)
Dist. Thane-401 404.)..Appellant.

V/s.

1.Digamber Shridhar Mhapsekar)
2.Vijay Parshuram Gangan, Trustee)
3.Shyam Bindumadhav Umarji, Trustee)
4.Vidyadhar Anant Apte, Trustee)
5.Raghav Manohar Narsalay, Treasurer)
6.Sanjay Manmohan Masurkar, Member)
7.Prabhakar Baburao Date, Member)
8.Suresh Vitthal Ghadawale, Member)
9.Balkrishna Ranganath Varde,Member)
10.Upendra Moreshwar Gharat,,Member)
11.Sachin Sharadchandra Chitre,Member)
12.Sandeep Kashinath Patil,Member)
13.Gangadhar Shamrao Phad, Member)
14.Shivraj Laxman Bhujbale, Member)
15.Smt.Snehal Mohan Hardikar, Member)
16.Smt.Prema Didappa Kalmali, Member)
17.Smt.Meena Anil Tongle,Member)
18.Smt.Madhura Shripad Matye,Member)
19.Prabhakar Kashinath Rane,Member)
20.Smt.Sulbha Gangadhar Shroti,Member)
21.Ranjan Shridhar Mhapsekar, Member)
22.Jagannath Shankar Gharat,Member)

23.Smt.Anuradha Manohar Narsalay,Member)
24.Shashikant Shripad Dalvi,Member)
25.Bhalchandra Shrikrushna Pandit,Member)
26.Smt.Vasumati B. Chitre, Member)
27.Shivaji Antu Matre, Joint Secretary)
28.Sameer Narayan Bhoir, Joint Secretary)
29.Mukesh Mohanbhai Patel, Member)
30.Aryan Education Society)
a Charitable Public Trust bearing)
registration No.P.T.R.F-393-(BOM),)
registered under Bombay Public Trust)
Act, 1950, having their office at 75,)
Jagannath Shankar Sheth Road, Girgaon,)
Mumbai 400 004.)..Respondents.

Mr.Shreekant V. Gavand for appellant.

Mr.M.P.Vashi i/b. M/s M.P.Vashi & Co. for respondent No.1.

Mr. S.Wassoodev for respondent Nos. 2 to 5.

Mr.K.S.Bapat i/b. Avinash Fatangare for Respondent Nos.22,27,28, 30 & 6 to 14.

CORAM: A.M.KHANWILKAR,J

DATE : MARCH 7, 2007.

ORAL ORDER:

1. Heard counsel for the parties. Admit.

2. Mr.Vashi waives notice for respondent No.1. Mr.S.Wassoodev waives notice for respondent Nos. 2 to 5. Mr.K.S. Bapat waives notice for respondent Nos. 22,27, 28, 30 &

6 to 14.

3. As short question is involved, appeal is taken up for final disposal forthwith by consent.

4. This appeal takes exception to the Judgment and Order date 20th November 2006 in Notice of Motion No.2927 of 2006 in Short Cause Suit No.3714 of 2006, passed by the City Civil Court, Greater Bombay. By this impugned order, the trial Court has granted interim relief in favour of the respondent No.1. The respondent No.1/plaintiff instituted suit before the trial Court for the following relief :

> "a) that this Hon'ble Court be pleased to declare and hold further that the conducting of the meeting by the Defendant No.5 to 8 on 8.07.2006 and minutes of the said meeting annexed in Ex-F are absolutely illegal and bad in law.
>
> b) That this Hon'ble Court be pleased to declare that the resolution No.1 (Subject 21) i.e. For removal of the Plaintiff by passing the no confidence motion in the further conducted meeting of the Council of Management of the Defendant No.1 and the resolution No.2 (Subject 21) for appointment of the Defendant No.8 as Chairman of the Council of Management of the Defendant No.1 in the same meeting further illegally conducted on

8.07.2006 is illegal, improper and bad in law. As set out in Exhibit `E' to the Plaint.

c) That this Hon'ble Court be pleased to declare that the resolution No.3 of subject 21 for appointment of seven School Committee Chairman in the meeting held on 08.07.2006 is illegal and void as set out in Exhibit “E” to the Plaint.

d) That pending the hearing and the final disposal of the suit this Hon'ble Court be pleased to stay the enforcement and effect of the said resolution of removal of the Plaintiff by no confidence motion against the Plaintiffs and resolution of the appointment of the Defendant No.8 as the Chairman of Council of Management of the Defendant No.1 in the said further conducted meeting of Council of Management of the Defendant No.1 in the said further conducted meeting of Council of Management of the Defendant No.1 held on 8.7.2006 as set out in Exhibit `E' to the Plaint.

e) that this Hon'ble Court be pleased to grant interim order sand injunction restraining the Defendant No.5,6 & 8 from further proceeding with convening and holding the meeting of Council of Management of the Defendant No.1 on 29.07.2006 or in future until further orders of this Hon'ble Court.

f) Ad-interim reliefs in terms of prayer (d) and (e) be granted.

g) Cost of the suit including professional costs be provided for.

h) Such other and further reliefs as the nature and circumstances of the case may require be granted.”

During the pendency of the said suit, the respondent No.1/plaintiff took out notice of Motion No.2927 of 2006 for the following reliefs:

> “a) That pending the hearing and the final disposal of the suit this Hon'ble Court be pleased to stay the enforcement and effect of the said resolution of removal of the Plaintiff by no confidence motion against the Plaintiffs and resolution of the appointment of the Defendant No.8 as the Chairman of Council of Management of the Defendant No.1 in the said further conducted meeting of Council of Management of the Defendant No.1 held on 8.7.2006 as set out in Exhibit `E' to the Plaint.
>
> b) that this Hon'ble Court be pleased to grant interim order and injunction restraining the Defendant No.5,6 & 8 from further proceeding with convening and hold the meeting of Council of Management of the Defendant No.1 on 29.7.2006 or in future until further orders of this Hon'ble Court.
>
> c) that ad-interim reliefs in terms of prayer (a) and (b) above be granted.
>
> d) that Cost of the Notice of Motion be provided for.
>
> e) that such other and necessary reliefs as this Hon'ble Court may deem fit and proper in the circumstances of the case may be granted.”

The trial Court by the impugned Judgment and order has made the Notice of Motion absolute. The operative part of the impugned order passed by the trial Court is at page 90-91.

"ORDER

1. Notice of Motion No.2927/2006 in SC Suit No.3714/06 is allowed in terms of prayer clause (a).
2. In terms of prayer clause (b) excluding meeting dated 29/7/2006, as it was already over.
3. Plaintiff to continue to act as the Chairman of Council of Management till the end of the period for which he was elected.
4. Notice of Motion stands disposed off."

The trial Court accepted the grievance of the respondent No.1/plaintiff that resolution passed by the committee removing the respondent No.1 as Chairman of the Trust was illegal, bad in law and without authority of law; That there was no authority in the Council to remove the Chairman in such a manner. The trial Court has also held that no confidence motion could not have been passed without a formal notice or for that matter including the item in the agenda for the meeting to be convened for that purpose. The trial Court has accepted the argument of the respondent No.1/plaintiff that power to remove the Chairman vested only in the Special General Body Meeting in terms of the bylaw No.76. Taking over all view of the matter, the Court made the Notice of Motion taken out by the respondent No.1/plaintiff absolute. The trial Court has also negatived the objections

raised on behalf of the appellant about maintainability of the suit in terms of provisions of sections 50 and 80 of the Public Trust Act on the reasoning that the reliefs claimed in the suit and the Notice of Motion by the Respondent No.1/plaintiff was not directed against the Trust as such, but to give effect to his civil rights of the Plaintiff which were affected on account of illegal resolution purportedly passed by the Council, so as to remove him from the post of Chairman. This decision is the subject matter of challenge in the present appeal.

5. The first contention canvassed before this Court is that the suit as instituted by the respondent No.1/plaintiff was not maintainable. Two reasons have been pressed into service in relation to this objection. It is submitted that in terms of section 80 of the Public Trust Act, such a suit was clearly barred before the Civil Court. It is then contended that the respondent No.1/plaintiff was obliged to take prior consent of the Charity Commissioner in terms of section 50 of the Act. Both these arguments have been considered by the trial Court and in my view rightly negatived. Counsel for the respondent No.1/plaintiff has placed reliance on the decision reported in 2000 (Suppl.) BCR page 582 in the case of Namgonda Jingonda Patil V/s.

Appasaheb Bapurao Walwekar and Ors.. Similar contention was considered in the said decision. This Court has held that when the suit is instituted in relation to vindicting civil rights for declaration that the resolution was illegal, such suit was neither barred by section 80 of the Act nor consent of the Charity Commissioner for institution of such suit would be prerequisite. The said exposition in this decision applies on all fours to the case on hand. Even in the present case, no prayer is made against the Trust as such. The relief is one for declaration that the resolution purportedly passed by the Council against the plaintiff is illegal and infracts civil rights of the plaintiff.

6. It was next contended that the trial court misdirected itself in taking the view that there was no authority in Managing Council to remove the Chairman by way of no confidence motion. Reliance was placed on the decision of Gujarat High Court reported in AIR 2002 Gujarat 348 in the case of Nandlal Bavanjibhai Posiya & ors. V/s. Director of Agriculture Marketing and Rural Finance, Gandhinagar & Ors. The trial Court however, has relied on the decision of the Division Bench of our High Court reported in AIR 1982 Bombay 216 in the case of Hindurao Balwant Patil & Anr V/s. Krishnarao Parshuram Patil & Ors.. In

paragraph-7, the Division Bench of the Bombay High Court was called upon to consider the question whether in the absence of any provision in the Act and bye laws of the Society, Managing Committee can pass resolution of no confidence against the Chairman and Vice Chairman before expiry of their term. After considering rival submissions on the relevant issue, the Court proceeded to observe thus:

> "According to the Shri Paranjape the persons who have right to elect the Chairman and the Vice-Chairman have got inherent or implied power to remove them in case of loss of confidence. In this context he has also placed reliance on the provisions of the General Clauses Act. From the bare reading of the provisions of the General Clauses Act, it is quite clear that Sec.16 of the Act cannot apply to an elective office. Various provisions of the Act do not prohibit a citizen from exercising his right guaranteed under Art. 19(1)(c) of the Constitution, nor it prohibits a citizen from assembling or participating in the discussion. Law merely prescribes conditions which must be observed if he wants to become a member of the Society or the board of Directors. Right to stand as a candidate or contest election is not a common law right. It is a special right created by the statute and can only be exercised on the condition and in the manner laid down or prescribed by the enactment concerned"

Indeed, the Counsel for the appellant is justified in contending that the view taken in this Judgment has been disapproved by the Division Bench of Gujarat High Court. However, I am bound

by the principle expounded by the Division Bench of our High Court. The argument of the appellant that the abovesaid decision of the Division Bench of our High Court is distinguishable as it deals with the provisions of the Maharashtra Co-operative Societies Act, does not commend to me. The principle underlying this decision will have to be applied to the case on hand. Besides, in the present case, I am in agreement with the submission canvassed on behalf of the respondent No.1/plaintiff that there is provision in the shape of bye-law No.76 which would govern the issue of removal of Chairman, assuming that such power was to be exercised in terms of bye-law No.76, which reads thus:

> "76. The office-Bearers, viz. The three Trustees, Members of the Council of Management, the Hon. Treasurer, the two Joint Honorary Secretaries, shall be on honorary basis and shall be liable to be removed from their office for incompetency, incapacity, negligence or misconduct in the performance of their duties by a Special Resolution passed at a Special General Meeting."

For examining the purport of this by-law it would be apposite to advert to the expression "Office Bearer" in terms of definition in bye-law - 3(n) which reads thus:

> "(n) "Office-Bearers" include Members of the Council of Management, Members of School Committees and/or such other Committees, Joint Honorary Secretaries, Honorary Treasurer and Auditor."

The definition of Office-Bearers is an inclusive term. On plain language of this provision, it is obvious that the Chairman of the Council is one of the Officer Bearer. Thus, understood, for removal of Office bearer such as the Chairman of the Council, the provisions of bye-law No.76 will have to be observed. As per the said provision, the Chairman could have been removed only by a special resolution passed at the Special General Meeting and not by the Managing Council in the manner, in which it has been done.

7. The trial Court has also rightly observed that the item of removal of respondent No.1/plaintiff from the post of Chairman was not on the agenda contained in the notice of the stated meeting. Besides, no intimation was given to all members who were entitled to remain present and vote in the meeting that such item will be considered at the proposed meeting. Thus understood, the so called resolution passed by the Managing Council will have to be treated as illegal and void

ab initio. It is relevant to note that total strength of the Managing Council is of 30 members. Out of 30 members only 24 members were present at the meeting and amongst them only 13 voted for the removal of the respondent No.1/plaintiff from the post of Chairman. One member who was present remained neutral and three voted against the motion of no confidence. It is stated that seven members abstained from voting. In other words, respondent No.1/plaintiff has been removed by way of no confidence motion, which is supported only by 13 members who voted in favour of the motion out of the total 24 members who were present at the meeting. Be that as it may, the manner in which the respondent No.1 has been removed as rightly observed by the trial Court is clearly without following due procedure and at any rate in contravention of principle of natural justice. That opinion of the trial Court deserves to be restated.

8. Counsel for the respondent No.1/plaintiff relied on the decision of the Division Bench of our High Court reported in 2003(4) Bom.C.R.49, in the case of Neeraja Rajendranath Mishtra V/s. Kalyan Dombivali Municipal Corporation School Board & Ors. Emphasis is placed on the observations in paragraph- 4 & 5 of this decision that no confidence motion even

at short notice will have to be treated as invalid.

9. Counsel for the appellant would persuade this court to take the view that the meeting conducted after respondent no.1 left the hall was legal and proper. It is not possible to accept this submission. The counsel for the respondent No.1 has rightly invited my attention to the observations made by the Apex Court in the case of Chandrakant Khaire V/s. Dr. Shantaram Kale & Ors., reported in (1988) 4 SCC 577 . In paragraph-16 of this decision, after referring to the law and practice of meetings, the Court went on to observe that even if the relevant rules do not give the chairman power to adjourn the meeting, he may do so in the event of disorder. Such adjournment must be for no longer than the chairman considers necessary and the chairman must, as far as possible, communicate his decision to those who are present. In the present case, the respondent No.1 was the Chairman when the meeting commenced. As per his order, meeting ought to have been treated as adjourned. However, after the respondent No.1 left the meeting hall, meeting was headed by Mr.Patel who acted as Chairman in which the impugned resolution came to be passed. Besides, the appellant came to elected as the

Chairman of the Managing Council as a consequence of removal of the respondent No.1/plaintiff in terms of the no confidence motion passed against him. Needless to observe that at any rate it was not open to elect a new chairman in the same meeting without a formal notice to all the members of the Managing Council. It is common ground that all members of the Managing Council were not present in the said meeting. Initially, 24 members were present. Out of whom seven left the meeting hall. In other words, meeting continued with only 17 members remaining in the meeting hall. The seventeen members could not have usurped the power of the entire Managing Council to elect a new chairman of the Managing Council. That too, without a formal notice or agenda to take decision on that subject. Mr.Vashi for the respondent No.1/plaintiff has rightly invited my attention to the Statement of law noted in the Book "Conduct and Procedure at Meetings", authored by O.R.Smith, 18th Edition. In Chapter 2 of this book at page 21 issue regarding the convening of meetings have been elaborately discussed. One of the argument canvassed on behalf of the appellant that it was open to the Chairman of the meeting to invite discussion on no confidence motion, as also for appointment of new chairman in the same meeting without there

being a formal notice or agenda on the subject with reference to the general business under the last item as any other subject with the permission of the chairman, this argument will have to be stated to be rejected. In Chapter-5 of the Book authored by O.R.Smith at page 41-42, this aspect has been dealt with. It is well established position that no business should be placed on the agenda or transacted at a meeting unless it comes within the scope of the notice convening the meeting. The general business does not take within its fold item such as removal of chairman or passing of no confidence motion or appointment of new chairman in his place. It is established position that under the item any other business with the permission of the chair, it is open to deal with only formal or unimportant matters, such as a resolution to pay a tradesman's bill and the like. The business of removal of chairman by passing no confidence motion or appointment of a new chairman, cannot be passed under the heading “general business”, or so to say with the permission of the chair, which obviously is of crucial importance as it concerns the constitution of the Managing Council and also has significant import on the interest of the trust. Thus understood, neither the purported resolution of the Managing Council to remove the respondent No.1/plaintiff by passing no confidence

motion can be said to be legal and valid, nor the subsequent resolution of appointing the appellant as chairman can be said to be legal and valid.

10. Mr.Vashi has rightly invited my attention to the exposition in paragraph 54 of the decision in the case of M.I.Builders Pvt.Ltd. V/s. Radhey Shyam Sahu and ors. Reported in (1999) 6 SCC 464. The Apex Court has observed that when the agenda does not include the subject nor there was any material to support the discussion on the subject, it could not have been considered in the meeting. The principle stated in the said decision will clearly apply to the case on hand. If so, resolution which is impugned in the suit will have to be considered as illegal and invalid.

11. Taking overall view of the matter, I see no reason to depart from the conclusion reached by the trial Court that such a resolution cannot be allowed to continue or operate, so as to denude the respondent No.1/plaintiff of his legitimate right to continue as chairman of the Managing Council office in accordance with the law.

12. The only grievance of the appellant that will have to be accepted in this appeal is that, in clause (3) of the Operative part of the order, the trial Court has observed that the plaintiff shall continue to act as chairman of the Council of the Management till the end of the period for which he was elected. This direction is very wide. The same will have to be understood to mean that the plaintiff shall continue to act as a chairman of the Council of the Management till the end of his tenure for which he is elected subject however, to other provisions of the Act and bye-laws, which may permit his removal in accordance with law. Only to this limited extent, the present appeal may succeed in relation to the clause (3) of the operative order. Rest of the challenge in this appeal will have to be rejected.

13. Accordingly, this appeal partly succeeds to the extent of modifying the observations in clause(3) of the operative part of the order as aforesaid. Rest of the impugned order is upheld and the same shall operate between the parties till the disposal of the suit. The parties shall forthwith give effect to the order passed by the trial Court making Notice of Motion absolute in terms of prayer clause (1) and (2) of the operative order forthwith.

14. In view of this order, civil application disposed of accordingly.

(A.M.KHANWILKAR,J)